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CRITICAL RACE PERSPECTIVES ON INTERNATIONAL LAW SYMPOSIUM

## "There is still a lot of work to be done."

An interview with Patricia Tuitt on the meaning and tasks of Critical Race Theory

DANA SCHMALZ — 28 February, 2018



Patricia Tuitt is a UK based legal academic with a sustained track record of teaching, research and strategic management within the field of critical legal studies. She has written extensively on international refugee law and the European Union, engaging critical race and postcolonial perspectives in various contexts. In this interview, she was willing to speak about her understanding of critical race theory and of its significance for international law.

1. *The first challenge for critical race perspectives is the very category of "race". It is this construct that lies at the basis of social injustices, yet it is as such also necessary for their critique. How must we understand this notion of race?*

On a certain level, this is the same problematic that faces all of critical theory's interrogations of positions of dominance, whether it is gender, or race, or any other. These are categories which you would, eventually, want to see erased. The introduction to "Race, Law, Resistance" (2004) would suggest that I give more weight to the notion of 'race' than a social construction theory would support. I describe my objective as one which looks at legal concepts from "an interpretative standpoint that places race as central organizing theme in their construction". On reflection, I think my position is close to the philosophical approach Denise da Silva develops in her 2007 book "Toward a Global Idea of Race". What she does, I think quite daringly and importantly, is to challenge the dominant approach to race theorizing, which looks at race as a social construct, but dismisses its scientific construction. Da Silva argues that we should not dismiss the period in which scientific constructions of race gained authority. The point is not whether these statements about race are true, but to acknowledge that they have real effects. According to Da Silva the science of man can no longer be dismissed as 'the moment of falsification' of the subject but rather as the mode in which the subject was introduced "as an effect of symbolic productive violence." So her concern is that the end objective of the social constructionist theory of race is the obliteration of racial difference. And what she shows in her book, using various examples such as the incarceration rates of black young men, is how this attempt to obliterate racial difference results in the literal deaths of black people.

2. *Many people will say "the race of a person does not play any role for me, I don't even register it". How does such individual perception relate to the existence of racial discrimination and inequalities on a social level?*

The idea of colorblindness has always been a feature of a certain kind of legal discourse, and one of the key challenges of critical race theory is to work against that idea that race is no longer an issue. I recently did a [review](#) of "[Inside the Ivory Tower](#)", a collection of essays by black women working in the UK university, and what these reflect is how difficult it has become to talk about race. Universities have adopted these very convincing policies around race, diversity policies, all kinds of supposedly anti-discrimination policies, which, conversely, make it difficult to talk about race. Claims of race discrimination are likely to be dismissed as hysterical or untruthful; the complaint is construed as a matter of the complainant's emotional health.

3. *In "Race, Law, Resistance" (2004) you write about "Institutional Racism and the Reasonable Man" – could you tell a little bit about how the notion of reasonableness relates to critical race critiques?*

I believe it is very important that Critical Race Theory is addressed to founding legal concepts – to those concepts that underpin the whole of law. In that regard, I was very inspired by the early critical race theorists in the American academy, and especially the insistence that we must look at the law of contracts against the institution of slavery. We must understand the link between treating persons as property and the development of this very important legal category. Now, the notion of the reasonable man is such a founding concept – deeply relevant to civil and to criminal law. The chapter looks at the part that the concept plays in determining when a duty of care in negligence has been breached. I argue that the reasonable man concept is a legal fiction which bears all the qualities of established institutions, including a certain racial ideology. So, what we have learned about institutionally racist practices might lead us to understand why conduct of public officials, such as police officers, which lead to serious harm of often young black men, might still be construed as reasonable in law.

4. *On the question of intersectionality: what are the particular challenges for tackling discrimination that is at the same time gender- and race-related?*

Many of us owe a great deal to Kimberle Crenshaw's really groundbreaking work on intersectionality. What work can intersectionality do today? Many progressive critical projects, including feminist critiques, still don't pay sufficient attention to race. In particular they don't pay sufficient attention to the experiences of women of color in the workforce, and to the specific vulnerability to sexual oppression and violence black women are exposed to. The reason Kimberle Crenshaw was inspired to write that early piece was because feminist critiques were mainly addressed to the concerns of white women and not of women of color. The challenges Crenshaw identified are still with us. I mentioned earlier my recent [review](#) of [Inside the Ivory Tower](#). Many of the authors used intersectionality as their frame of reference. What the women authors identified was that some forms of race discrimination are directed at black women, not at women generally, and not at academics of color in general. One example many advanced was a kind of over-surveillance black women experienced, an over-scrutiny of their actions; many felt that the purpose of that scrutiny was exactly to look for signs of potential complaints about racism. There is still a lot of work to be done.

5. *Critical race perspectives are by necessity different depending on the respective society – is there room for a critical race perspective on international law? What do you see as the problems and the prospects?*

The first question would be what we understand as international law. If we adopt a broad

definition, and I think we should, much of my work on refugee law and on the European Union falls within the field of critical race perspectives on international law. In "[False Images](#)" (1996), I argue that the Geneva Refugee Convention, still the main international instrument governing the protection of refugees, is very much a European construct. This comes with implications for postcolonial but also for critical race perspectives: refugees not covered by the Convention's very narrow definition are presented as behaving abusively when making claims against the Convention. The legal rights contained in the Convention were not intended for them. My work on the European Union provided me with the opportunity to explore the continuing relevance of colonial legal practices and legal concepts in the making of new legal entities and institutions. This involves reflecting on how the seemingly past period of colonial land appropriation still shapes current legal projects and methodologies.

#### 6. What potential do you see in law and literature for critical race theory?

It has significant potential – provided that we do not fall into the trap of treating literature and other aesthetic forms as non-violent. Too much of contemporary critique presents literature as innocent of violence – in contrast to the violence of the law. I have published on this theme – most recently in two edited collections: one on [crime fiction and the law](#), and [another](#) which explored the role of aesthetics in the development of the post-apartheid South African Constitution. The potential of law and literature is also tied to the 'decolonizing curricula' project. Current scholarship is too focused on Western ancient myths and literary canons.

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